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EXAMINER
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ART UNIT	PAPER NUMBER
3625	

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *13 December 2002* .

2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-6 and 8-10* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) *1-6 and 8-10* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____ .

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: .

DETAILED ACTION

1.   This Final Office Action is responsive to Applicant's Amendment submitted

December 13, 2002. Claims 1-6 and 8-10 are pending.

Claim Rejections - 35 USC § 112

2.   The rejection of claims 8-10 under the second paragraph of 35 U.S.C. § 112

have been withdrawn in response to Applicants' Amendment.

3.   The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly
> claiming the subject matter which the applicant regards as his invention.

4.   Claim 1 is rejected under 35 U.S.C. § 112 second paragraph for failing to

particularly point out and distinctly claim that which applicant regards as his invention.

Claim 1 recites "said customer profiles" in line 23. "[S]aid customer profiles" is preceded

by "off-line static online customer profiles" (lines 3 and 4) and "a dynamically changing

profile of the customer" (line 14). Therefore, it is unclear which profile "said customer

profiles" refers to. Correction is requested.

5.   Claim 1 recites "said customer profiles" in line 23. This limitation renders the

claim indefinite because there is no antecedent basis for a plurality of customer profiles.

Correction is requested.

6.   Claim 1 recites "said e-commerce site profiles" in line 25. This limitation renders

the claim indefinite because there is no antecedent basis for a plurality of e-commerce

site profiles. Correction is requested.

Claim Rejections - 35 USC § 103

7.   **Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Solomon (US 6,035,288) in view of Franklin et al. (US 6,125,352).**

Regarding claim 1, Solomon teaches a computer assisted on-line negotiation method in which an on-line e-commerce site can negotiate with a customer based on his or her dynamic profile comprising the steps of:

generating by an on-line e-commerce site off-line static customer profiles based on past history that the site has about various customers, including multiple value attributes (col. 1, line 67; col. 2, lines 1-5; and col. 3, lines 12-14 and 43-52);

assigning by the on-line e-commerce site a static customer profile to a new customer visiting the on-line e-commerce site, the initial assignment to a profile being based on whatever information is available about the customer at the time of assignment (col. 3, lines 60-64; and col. 4, lines 1-7);

negotiating by the on-line e-commerce site with the customer based on a dynamically changing profile of the customer (col. 1, lines 44-61; col. 3, lines 60-67; col. 4, lines 63-67; and col. 5, lines 1-19); and

changing by the on-line e-commerce site the customer's dynamically changing profile during negotiations based on a observed behavior of the customer wherein said customer profiles are comprised of information useable to the advantage of the e-commerce site in said on-line negotiation with customers and (col. 3, lines 60-64; and col. 4, lines 1-7).

Solomon does not teach the steps of:

- capturing by the customer the on-line e-commerce site's actions and

  formulating by the customer a profile of the on-line e-commerce site;

- changing by the customer the on-line e-commerce site's dynamically

  changing profile during negotiations based on an observed behavior of the

  on-line e-commerce site

- negotiating by the customer with the on-line e-commerce site based on a

  dynamically changing profile of the site

- wherein said e-commerce site profiles are comprised of information useable

  to the advantage of the customer in said on-line negotiation.

However, Franklin et al. teach an e-commerce system "which allow[s] a

consumer to browse product information advertised over the WWW, gather information

about products and merchants, selectively store the product and merchant information

in a client side database, compare product information from different merchants, and

purchase products sold over the Internet." (Col. 7, lines 37-41). At the time of

Applicant's invention, it would have been obvious to one of ordinary skill in the art, to

modify Solomon to include the teachings of Franklin et al.. Through this combination,

consumers could use Solomon to store a list of e-commerce sites and their relative

prices for products. Thus, consumers could compare prices of other merchants while in

negotiating with a single merchant.

Regarding claim 2, Solomon further teaches a computer assisted on-line

negotiation method further comprising the step of updating past history information

based on the negotiations with the customer (col. 4, lines 1-7).

Regarding claim 3, <u>Solomon</u> further teaches a computer assisted on-line

negotiation method wherein the attributes included in the past history information

include non-quantitative information (col. 4, lines 1-7).

8.   Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable

over <u>Solomon</u> (US 6,035,288) in view of <u>Franklin et al.</u> (US 6,125,352) and <u>Gerace</u>

(US 5,991,735).

Regarding claim 4, <u>Solomon</u> and <u>Franklin et al.</u> teach all the limitations discussed

under claim 3 above. <u>Solomon</u> and <u>Franklin et al.</u> do not specifically teach a computer

assisted on-line negotiation method wherein the non-quantitative information includes

season and time of day. However, <u>Gerace</u> teaches creating a customer profile wherein

the profile comprises the date and time when the customer accessed a particular

website (col. 7, lines 4-47). At the time of the applicant's invention, it would have been

obvious to one of ordinary skill in the art, to modify the teachings of <u>Solomon</u> and

<u>Franklin et al.</u> to include the teachings of <u>Gerace</u>. Including the step of updating past

negotiation history information with non-quantitative information including season and

time of day would provide the e-commerce website with greater bargaining power

because the e-commerce site would have a means for estimating a customer's needs at

a particular time.

Regarding claim 5, <u>Solomon</u> and <u>Franklin et al.</u> teach all the limitations discussed

under claim 1 above. <u>Solomon</u> and <u>Franklin et al.</u> do not specifically teach a computer

assisted on-line negotiation method further comprising the steps of: capturing by the on-

line e-commerce site direct interactions by the customer with the on-line e-commerce

site, said direct interactions including the customer's "click-through stream" and other

direct interaction with the on-line e-commerce site, and analyzing said direct interactions

with the on-line e-commerce site to update the customer's dynamic profile. Gerace

teaches recording the link from which the customer accesses an on-line targeted

advertising system (col. 7, lines 4-47). Gerace also teaches storing each click of a

customer's mouse to record a user's motion and movements during a session with the

targeted advertising system (Id.). At the time of the applicant's invention, it would have

been obvious to one of ordinary skill in the art, to modify the teachings of Solomon and

Franklin et al. to include the teachings of Gerace. By capturing by the on-line e-

commerce site the customer's "click-through stream" and other direct interaction with

the on-line e-commerce site and analyzing the interaction with the on-line e-commerce

site to update the customer's dynamic profile, the e-commerce site would be informed of

which items the customer finds most interesting. Thus, the e-commerce site would be

afforded greater bargaining power by knowing the customer's preferences.

9.   **Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over**

Solomon (US 6,035,288) in view of Franklin et al. (US 6,125,352) and Dedrick (US

5,717,923).

Solomon and Franklin et al. teach all the limitations discussed under claim 5

above. Solomon and Franklin et al. do not teach a computer assisted on-line

negotiation method wherein the other direct interaction includes the customer's voice

and physical actions. Gerace teaches recording a user's motions/movements through a

website (col. 7, lines 16-29). Dedrick teaches an input means for modifying a

customer's profile using a voice input means (col. 5, lines 16-33). At the time of the

applicant's invention, it would have been obvious to one having ordinary skill in the art,

to modify the method of Solomon and Franklin et al. to include the teachings of Gerace

and Dedrick. Recording a customer's direct interaction, including the customer's voice

and physical actions, the e-commerce site would be informed of the mood of the

customer thereby allowing e-commerce site to take into account the customer's mood

during negotiations.

10.   **Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over**

Solomon (US 6,035,288) in view of Birkhead (Birkhead, E., "Digging with Gopher,"

LAN Computing, Vol. 5, no. 4 (Aprill 1994) p. 23).

Regarding claim 8, the combination of Solomon and Franklin et al. teach all the

limitations discussed under claim 1 above. Solomon does not specifically teach an on-

line negotiation method further comprising the steps of storing by the customer a

formulated profile of the on-line e-commerce site in a database of on-line e-commerce

site profiles and accessing the on-line e-commerce site from the database by the

customer to begin negotiations with the on-line e-commerce site. Birkhead teaches

having a network user establish personal bookmarks that connect to frequently-used

services and applications (page 1). At the time of the applicant's invention, it would

have been obvious to one having ordinary skill in the art, to modify the method of

Solomon, to include the teachings of Birkhead. By adding the steps of storing by the

customer a formulated profile of the on-line e-commerce site in a database of on-line e-

commerce site profiles and accessing the on-line e-commerce site from the database by

the customer to begin negotiations with the on-line e-commerce site, the <u>Solomon</u>

method would have the ability to provide customers with quick access to the on-line e-

commerce website. Moreover, storing by the customer a formulated profile of the on-

line e-commerce site in a database of on-line e-commerce site profiles would prevent

the customer from losing the URL associated with the on-line e-commerce website.

Regarding claim 9, <u>Solomon</u> further teaches a computer assisted on-line

negotiation method recited further comprising the step of dynamically modifying by the

customer the on-line e-commerce site's profile during negotiations with the on-line e-

commerce site based on actions by the on-line e-commerce site (col. 4, lines 16-32 and

63-67; and col. 5, lines 1-7).

Regarding claim 10, <u>Solomon</u> teaches a computer assisted on-line negotiation

method wherein actions by the on-line e-commerce site on which the site's profile is

dynamically modified include offering of terms, said terms including prices of items for

sale, packaged deals and bonuses (col. 4, lines 63-67; and col. 5, lines 1-20).

Response to Arguments

11.   Applicant's arguments filed December 13, 2002 have been fully considered but

they are not persuasive.

<u>Claim 1</u>

12.   Applicant suggests "[t]here is no description or suggestion in Franklin of

capturing by the shopper of information enabling the shopper to establish a profile for

negotiation." (Amendment, p. 3). The Examiner respectfully disagrees. Franklin

discloses a system wherein product is stored on a client-side database (col. 7, liens 34-

41). The product information may include product features and prices from a plurality of merchants (col. 9, lines 1-8). Consequently, a consumer who is engaged in an online negotiation could access Franklin's client-side database to evaluate a merchant's offer by comparing it to offers from other merchants. Therefore, Franklin suggests having the shopper capture information that enables him to establish a profile for on-line negotiation.

13.   Applicants argue Solomon does not teach or suggest a system wherein each side of a negotiation develops profiles of the other side in order to gain advantage in the bargaining (Amendment, p. 4). However, Solomon discloses creating a demographic profile of the user based on a series of questions posed by the merchant (col. 4, lines 1-7). This profile is "stored and used later is sessions with the same customer" to develop a response to the customer's counteroffer (Col. 4, lines 4-6). Therefore, Solomon clearly discloses a merchant developing a profile of the user to be used to the merchant's advantage.

Furthermore, by disclosing an online method for conducting negotiations, Solomon suggests capturing the profile of a merchant as taught by Franklin. Every negotiation involves an exchange wherein each party's relative advantage is determined by their bargaining power. One means of enhancing a party's bargaining power is to gain information relating to the subject matter of the exchange. Franklin teaches using a client-side database to store merchant and product information from a plurality of sources. This information could improve the bargaining power a customer involved in an online negotiation. Therefore, Solomon suggests capturing the profile of a merchant.

14.   Applicants further contend Franklin fails to describe or suggest gathering and analyzing "the full range of information about the other party" to establish a profile (Amendment, pl. 4). The Examiner notes, however, claim 1 simply recites "capturing by the customer the on-line e-commerce site's actions" and formulating by the customer a profile of the on-line e-commerce site." Neither the claims nor the specification provides a description as to what the e-commerce site profile consists of. Furthermore, assuming claim 1 could be construed to include "a full range of information about the other party," Franklin meets this limitation. Franklin discloses storing detailed merchant information including the merchant's warranty and Internet address (col. 9, lines 1-14).

15.   Applicants further argue Solomon's disclosure of using a merchant profile for the advantage of the merchant teaches away from the invention which uses a merchant profile for the advantage of the customer (Amendment, p. 4). The Examiner respectfully disagrees. As discussed above, every negotiation involves each party exercising their bargaining power. Therefore, by disclosing an online method for conducting negotiations, Solomon suggests using a merchant profile for the advantage of the customer.

Furthermore, by creating a customer profile for advantage of the merchant, Solomon teaches creating a profile for the advantage *of a party* to the negotiation. Like merchants, customers are parties to a negotiation transaction. Therefore, Solomon's disclosure of creating a customer profile for a merchant does not teach away from the claimed invention.

Applicants point out the term "profile," as defined in the specification, "relates to those aspects of the party on the other side of the bargaining transaction which are relevant to the conduct of the negotiation." (Amendment, p. 5). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Furthermore, assuming the limitations from the specification could be read into the claims, the specification fails to detail the content of the merchant file as recited in claim 1.

Claims 4, 5 and 6

16.   Applicants contend neither Gerace nor Dedrick disclose or suggest the customer capturing profiles of the e-commerce site (Amendment, p. 5). However, this argument is moot because the capturing of e-commerce site profiles by a user is taught by Franklin as discussed above.

Claims 8 and 10

17.   Regarding claims 8-10, the applicants argue that Birkhead simply teaches storing web addresses of an e-commerce site. This, applicants contend, says nothing about the e-commerce site profile. The examiner respectfully disagrees. Bookmarking an e-commerce site involves storing a web address in a designated database file. For example, a user may bookmark an e-commerce site that sells computer components in a file labeled "computer vendors." This creates a profile of the e-commerce site in that information about the e-commerce site's line of business is both stored and conveyed. More specific vendor profiles could be created depending upon the needs of the user.

For example, a user could well designate a file for computer vendors who offer a line of credit. Thus, Birkhead's teaches storing a profile of an e-commerce site.

Conclusion

18.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

19.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tim Brown whose telephone number is (703) 305-1912. The examiner can normally be reached on Monday - Friday, 8am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on (703) 308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is (703) 308-

1113.

Tim Brown
Examiner
Art Unit 3625

TB
February 23, 2003

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